

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

SANDRA GLOWACKI, on behalf of her
minor children, D.K.G. and D.C.G.,

Plaintiffs,

v

CASE NO: 11-cv-15481

HON. PATRICK J. DUGGAN

HOWELL PUBLIC SCHOOL DISTRICT,
JOHNSON ("JAY") MCDOWELL, individually
and in his official capacity as a teacher in the Howell
Public School District,

Defendants.

_____ /

**DEFENDANT MCDOWELL'S RESPONSE
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

CERTIFICATE OF SERVICE

Respectfully submitted,

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Dated: December 5, 2012

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**DEFENDANT MCDOWELL'S RESPONSE
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

TABLE OF CONTENTS

	<u>Page</u>
FACTS	1
ARGUMENT	1
I. PLAINTIFFS' FIRST AMENDMENT RIGHTS WERE NOT VIOLATED.....	1
II. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR VIOLATION OF EQUAL PROTECTION RIGHTS.	2
RELIEF REQUESTED.....	2
CERTIFICATE OF SERVICE	

FACTS

- The Affidavits of the students attached to plaintiffs' brief are in contradiction to Daniel Glowacki's own testimony, in many ways. With regard to the conversation during class that day, defendant asserts it's best left up to the testimony of the participants, Dan Glowacki and Jay McDowell.
- With regard to any impact Glowacki's statements had on the class, defendant refers this court to the statements of fellow students, Casey King and Henry Tesner. Henry states that TJ left the classroom based upon what Daniel said and he, too, wanted to leave. Henry stated he was hurt and felt discriminated against (Exhibit H). These statements support defendant's argument that he believed Dan Glowacki's comment to infringe on others' rights.

ARGUMENT

I. PLAINTIFFS' FIRST AMENDMENT RIGHTS WERE NOT VIOLATED.

Defendant has set forth how the statement was not only disruptive but how it interfered with the rights of others; plaintiffs have failed to counter this argument.

Plaintiffs assert on p. 12 of their brief that any restriction on speech, even if related to a pedagogical concern, must still be viewpoint neutral. Plaintiffs further state that, "Here, there is no dispute that defendants restricted plaintiff's speech because it conveyed a religious message that failed to promote the homosexual lifestyle (Plaintiffs' brief, p. 13). This is incorrect; it is very much contested that plaintiff was disciplined for religious speech. Not only does Mr. McDowell deny this, but his actions prove otherwise. (Please see Exhibit B, McDowell testimony.) Adam Schang was also disciplined when he stated that he, too, did not "accept

gays.” It is uncontested that Mr. Schang did not speak to religion; he did not say that based upon his religious beliefs he felt a certain way, etc. As set forth more fully in the defendant’s brief, Mr. McDowell’s actions do not evidence religious speech intolerance, just intolerance of discriminatory/bullying speech.

Dan Glowacki’s rights were not violated as his speech was permissively regulated.

II. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR VIOLATION OF EQUAL PROTECTION RIGHTS.

Plaintiff has failed to identify how he was treated differently based upon his religious beliefs when Adam Schang was also suspended, yet he did not claim his beliefs were religiously based. Defendant treated Dan Glowacki the same as the other student he believed was acting in a bullying fashion.

RELIEF REQUESTED

Based upon defendant’s earlier filed motion and brief in support as well as this response, defendant requests this Honorable Court to dismiss plaintiffs’ cause of action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2012, I electronically filed the foregoing paper with the
Clerk of the Court using the ECF system which will send notification of such filing to the following:

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